

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Request for Review of a
Decision of the
Universal Service Administrator by
Mobile Elementary School District 86
Maricopa, Arizona
Riverside School District 2
Phoenix, Arizona
Paloma Elementary School District 94
Gila Bend, Arizona
Sentinel Elementary School District 71
Dateland, Arizona
Federal-State Joint Board on
Universal Service
Changes to the Board of Directors of the
National Exchange Carrier Association, Inc.

ORDER

Adopted: October 4, 2002

Released: October 7, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by the above-captioned applicants.1 The above-captioned entities request

1 Letter from Ben Arredondo and Allison Cioffi, Office of the County Superintendent, Maricopa County, Arizona, filed on behalf of applicants Mobile Elementary School District 86, Paloma Elementary School District 94, Riverside School District 2, Sentinel Elementary District 71, to Federal Communications Commission, filed December 20, 2001 (Requests for Review). As noted by Maricopa in its Request for Review, in Funding Year 2001 applications were also filed by Aguila Elementary School District 63 (SLD-268016), Arlington School District 47 (SLD-267305), Morristown Elementary District 75 (SLD-278631), Nadaburg Elementary School District 94 (SLD-278571), Ruth Fisher School District 90 (SLD-267345), Union Elementary District 62 (SLD-279892), and Maricopa County Special Education District 512 (SLD-268120). Because Maricopa does not specifically request (continued....)

review of decisions by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) relating to applications filed in Funding Year 2001 of the schools and libraries universal service support mechanism.<sup>2</sup> For the reasons set forth below, we dismiss in part and deny in part the Requests for Review.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.<sup>3</sup> In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.<sup>4</sup> Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, the applicant must submit a completed FCC Form 471 application to the Administrator.<sup>5</sup>

3. Under the Commission's regulations, SLD is authorized to establish program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.<sup>6</sup> Pursuant to this authority, every funding year, SLD establishes and notifies applicants of a "minimum processing standard" to facilitate the efficient review of the thousands of applications requesting funding.<sup>7</sup> In Funding Year 2001, SLD instructions stated that minimum processing standards required applicants to use the correct form.<sup>8</sup> When an applicant submits an application that does not comply with an item subject to the minimum processing standard, SLD automatically rejects the application and returns it to the applicant.

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review of decisions made by SLD with respect to each of these applications, we do not address them in the instant Order.

<sup>2</sup> See Requests for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c). In prior years this funding period was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus, the funding period that began on July 1, 2001 and ended on June 30, 2002, previously known as Funding Year 4, is now called Funding Year 2001. The funding period which began on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

<sup>3</sup> 47 C.F.R. §§ 54.502, 54.503.

<sup>4</sup> 47 C.F.R. § 54.504 (b)(1), (b)(3).

<sup>5</sup> 47 C.F.R. § 54.504(c).

<sup>6</sup> See 47 C.F.R. § 54.507(c); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

<sup>7</sup> See, e.g., SLD website, Form 471 Minimum Processing Standards and Filing Requirements for FY 2001, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Funding Year 2001 Minimum Processing Standards).

<sup>8</sup> *Id.*

The Wireline Competition Bureau (Bureau) has upheld SLD's minimum processing standard of requiring the applicants to use the correct form.<sup>9</sup>

4. The Commission's rules also allow the Administrator to implement an initial filing period ("filing window") for the FCC Form 471 applications that treats all schools and libraries filing within that period as if their applications were simultaneously subject to separate funding priorities under the Commission's rules.<sup>10</sup> Applications that are received outside of this filing window are subject to separate funding priorities under the Commission's rules.<sup>11</sup> It is to all applicants' advantage, therefore, to ensure that the Administrator receives their applications prior to the close of the filing window. In Funding Year 2001, the filing window closed on January 18, 2001.<sup>12</sup>

5. In Funding Year 2001, the above-captioned entities filed FCC Forms 471 with SLD.<sup>13</sup> The forms were completed using a downloaded version of the correct OMB-approved FCC Form 471 dated October 2000 in the lower right hand corner of the form.<sup>14</sup> Each application had multiple Block 5 worksheets.<sup>15</sup> When using the copy and paste function to copy the Block 5 worksheets for each application, the date in the lower right-hand corner was deleted on most of the Block 5 worksheets.<sup>16</sup> On December 20, 2001, the instant appeal was filed with the

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<sup>9</sup> See *Request for Review by Fair Lawn Board of Education, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.12-10-99.02300008 and NEC.471.11-19-99.01100003, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 12901 (Com. Car. Bur. 2001) (upholding SLD's minimum processing standard that required applicants to use the correct FCC Forms for the funding years in which they were applying).

<sup>10</sup> 47 C.F.R. § 54.507(c).

<sup>11</sup> 47 C.F.R. § 54.507(g).

<sup>12</sup> SLD website, What's New (November 2, 2000) <<http://www.sl.universalservice.org/whatsnew/112000.asp#110200>>. Starting with the application process for Funding Year 4, SLD, in consultation with the Commission, directed that FCC Forms 471 would be considered filed when *postmarked*, not when received. The new policy is designed to ensure that applicants are held harmless in the event of a failure of the postal system or courier to deliver the application within a reasonable period of time. SLD's new policy applies only starting in Funding Year 2001, and does not apply retroactively to the first three funding years. See *Instructions for Completing the Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471)*, OMB 3060-0806 (October 2000) (Form 471 Instructions).

<sup>13</sup> FCC Form 471, Mobile Elementary School District 86, filed January 18, 2001 (Mobile Form 471); FCC Form 471, Paloma Elementary School District, filed January 22, 2001 (Paloma Form 471); FCC Form 471, Riverside School District 2, SLD-267648, filed January 22, 2001 (Riverside January Form 471); FCC Form 471, Riverside School District 2, SLD-276385, filed January 22, 2001 (Riverside April Form 471); FCC Form 471, Sentinel Elementary District 71, filed January 22, 2001 (Sentinel Form 471).

<sup>14</sup> See Requests for Review at 1.

<sup>15</sup> *Id.* See also Mobile Form 471; Paloma Form 471; Riverside January Form 471; Riverside April Form 471; Sentinel Form 471.

<sup>16</sup> See Requests for Review at 1.

Commission concerning the above-captioned applications.<sup>17</sup> We discuss the merits of the Request for Review for each of the applications below.

6. **Mobile Elementary School District 86 (SLD-267902)**. At this time, Mobile's application for discounts from the schools and libraries support mechanism remains under consideration by SLD. Because SLD has issued no reviewable decisions regarding Mobile's application, we dismiss the Request for Review for Mobile Elementary School District 86, application number SLD-267902.<sup>18</sup> We note that once SLD has taken action or made any decisions regarding Mobile's application, any person aggrieved by such action may seek review of the decision pursuant to section 54.719 of the Commission's rules.<sup>19</sup>

7. **Riverside School District 2 (SLD-267648)**. On March 22, 2001, SLD notified Riverside that application number SLD-267648 could not be processed because it did not meet minimum processing standards for Funding Year 2001.<sup>20</sup> SLD stated that Riverside did not meet Funding Year 2001 minimum processing standards because it had not used the correct OMB-approved FCC Form 471 that was dated October 2000 in the lower right-hand corner of the form.<sup>21</sup>

8. On April 2, 2001, Riverside filed an appeal with SLD stating that the correct OMB-approved FCC Form 471 dated October 2000 had been used for its application.<sup>22</sup> Indeed, although some of the pages did not have the actual October 2000 date in the lower right-hand corner of the form, the correct form had been used.<sup>23</sup> On July 13, 2001 issued an Administrator's Decision on Appeal granting the appeal and approving the application for data entry.<sup>24</sup> A Funding Commitment Decision Letter was issued on August 30, 2002 approving all funding requests as submitted.<sup>25</sup> Because we believe the issues raised in the instant appeal are now moot, we dismiss the Request for Review for Riverside School District 2, application number SLD-

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 47 C.F.R. § 57.719.

<sup>20</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Karen Tuffs, Riverside School District 2, dated March 22, 2001 (Riverside Funding Year 2001 Form 471 Rejection Letter).

<sup>21</sup> *Id.*

<sup>22</sup> Letter from Karen Tuffs, Riverside School District 2, to Schools and Libraries Division, Universal Service Administrative Company, filed April 2, 2001.

<sup>23</sup> *See* Riverside January Form 471.

<sup>24</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Karen Tuffs, Riverside School District 2, dated July 13, 2001.

<sup>25</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Cindy Owens, Riverside School District 2, dated August 30, 2002.

267648.

9. **Riverside School District 2 (SLD-276385)**. On April 2, 2001, Riverside re-filed its application for Funding Year 2001.<sup>26</sup> Because the application was considered to be filed separately from the January Form 471, it was assigned the application number SLD-276385. On July 10, 2001 SLD notified Riverside that application number SLD-276385 had been filed outside of the filing window.<sup>27</sup>

10. We conclude that SLD appropriately determined that application number SLD-276385 was filed outside of the filing window for Funding Year 2001. In order for the program to work efficiently, the applicant must assume responsibility for timely submission of its application materials if it wishes to be considered within the window. Here, the record reflects that Riverside did not file application number SLD-276385 within the filing window. We therefore deny the Request for Review for Riverside School District 2, application number SLD-276385.

11. **Paloma Elementary School District 94 (NEC.471.01-22-01.057000933) and Sentinel Elementary School District 71 (SLD-278572)**. On July 26, 2001, SLD notified Paloma and Sentinel that their Funding Year 2001 applications could not be processed because they did not meet minimum processing standards.<sup>28</sup> SLD stated that Paloma and Sentinel did not meet Funding Year 2001 minimum processing standards because they had used the incorrect OMB-approved FCC Form 471 that was dated October 2000 in the lower-right hand corner of the form.<sup>29</sup> On December 20, 2001, Sentinel and Paloma filed the instant Requests for Review.<sup>30</sup>

12. For requests seeking review of decisions issued before August 13, 2001 under section 54.720(b) of the Commission's rules, an appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.<sup>31</sup> Documents are considered to be filed with the Commission or SLD only upon receipt.<sup>32</sup> The 30-

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<sup>26</sup> Application number SLD-276385 is identical to application number SLD-267648. *Compare* Riverside April Form 471 *with* Riverside January Form 471. *See also* paras. 7-8.

<sup>27</sup> Postcard from Schools and Libraries Division, Universal Service Administrative Company, to Karen Tuffs, Riverside School District 2, dated July 10, 2001 (Out of Funding Year 2001 Filing Window Postcard).

<sup>28</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Lana Abrigo, Paloma Elementary School District 94, dated July 26, 2001 (Paloma Funding Year 2001 Form 471 Rejection Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Christopher Maynes, Sentinel Elementary School, dated July 26, 2001 (Sentinel Funding Year 2001 Form 471 Rejection Letter).

<sup>29</sup> *Id.*

<sup>30</sup> Requests for Review. In its Request for Review, Maricopa indicates that letters of appeal were sent to SLD on August 2, 2001 on behalf of Paloma and Sentinel. SLD, however, has no record of receiving these letters. *See id.*

<sup>31</sup> 47 C.F.R. § 54.720(b).

<sup>32</sup> 47 C.F.R. § 1.7.

day deadline contained in section 54.720(b) of the Commission's rules applies to all such requests for review filed by a party affected by a decision issued by the Administrator.<sup>33</sup> Because Paloma and Sentinel failed to file an appeal of their July 26, 2001 Funding Year 2001 Form 471 Rejection Letters within the requisite 30-day appeal period, we deny their Requests for Review.

13. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291 and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed on December 20, 2001 by Maricopa County, Phoenix, Arizona, on behalf of Mobile Elementary School District 86, Maricopa, Arizona, IS DISMISSED.

14. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed on December 20, 2001 by Maricopa County, Phoenix, Arizona, on behalf of Riverside School District 2, Phoenix, Arizona, IS DISMISSED.

15. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed on December 20, 2001 by Maricopa County, Phoenix, Arizona on behalf of Paloma Elementary School District, Gila Bend, Arizona, IS DENIED.

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<sup>33</sup> Due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. Dec. 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. Dec. 28, 2001 and Jan. 4, 2002). Because the July 26, 2001 Funding Year 2001 Form 471 Rejection Letters were issued before August 13, 2001, the extended appeal period does not apply to Sentinel or Paloma.

16. IT IS FURTHER ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed on December 20, 2001 by Maricopa County, Phoenix, Arizona, on behalf of Sentinel Elementary School District 71, Dateland, Arizona, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau